

INTRODUCTION

- [1] The Tenant seeks a \$713.50 return of rent regarding a payment by the Tenant to the Landlord on July 31, 2024.

DISPOSITION

- [2] I find that the Tenant's return of rent claim is denied. The Tenant had rental arrears for June of 2024 and also had to pay the Landlord pro-rated rent for August of 2024.

BACKGROUND

- [3] The Unit is a two-bedroom apartment. The details of the tenancy agreements are discussed below.
- [4] On September 20, 2024 the Tenant filed a *Form 2 (A) Tenant Application to Determine Dispute* (the "Application") with the Rental Office requesting a return of August 2024 rent, in the amount of \$713.50.
- [5] On October 1, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for October 17, 2024, along with a copy of the Application.
- [6] On October 11, 2024 the proceeding was converted to a paper based hearing. The Rental Office emailed the parties a 58-page Evidence Package, video evidence and notice of paper based hearing. The parties provided a series of additional documentary evidence and written responses which form part of the record for this matter.

ISSUE

- A. Must the Landlord return rent to the Tenant?

ANALYSIS

- [7] The Landlord rented the Unit from its owner (the "Owner") for \$1,325.61 per month under a tenancy agreement (the "Primary Agreement").
- [8] The parties had a pre-existing personal relationship which later became a landlord-tenant relationship. For this reason, some of the typical characteristics of a landlord-tenant relationship were not present, such as a security deposit or a written tenancy agreement. However, I am satisfied that the parties entered into an oral, sublet tenancy agreement (the "Sublet Agreement") within the meaning of subsection 1(w) of the *Residential Tenancy Act*, which states:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and the provision of services and facilities.

- [9] The evidence does not support a direct landlord-tenant relationship between the Tenant and the Owner. The Tenant's occupation of the Unit was based upon the Sublet Agreement with the Landlord.
- [10] The Tenant lived in the Unit since at least January 1, 2024. The parties agreed that the Tenant would pay the Landlord half (\$662.80) of the monthly rent paid by the Landlord to the Owner plus half the cost of internet and electricity. The parties agreed to share some other expenses which are beyond the landlord-tenant relationship and the Rental Office's jurisdiction.

- [11] Upon review of the evidence, I am not satisfied that the Landlord originally intended to charge the Tenant rent for January 2024. The Tenant made a rent payment near the end of January of 2024 which the Landlord applied to February's rent instead of January's rent. Therefore, I am not satisfied that the Tenant owes any rent for January of 2024.
- [12] The Landlord's evidence shows that the \$662.80 portion of the rent was paid from February to May and also July of 2024. The Landlord's rent ledger states that \$662.80 is outstanding for June of 2024.
- [13] On July 31, 2024 the Tenant paid the Landlord \$713.50. The Tenant's position is that this was intended to pay August of 2024 rent. The Landlord's position is that this payment covered earlier rental arrears.
- [14] I note that in order for the Tenant to receive a return of rent it must be established that there are no rental arrears. I have already determined that there were no rental arrears for January of 2024. However, I find that there were rental arrears for June of 2024.
- [15] The evidence presented establishes that the Tenant did not pay the \$662.80 portion of the monthly rent for June of 2024. I am satisfied that the Landlord was willing not to charge the Tenant rent for June of 2024 on the condition that the Tenant move out of the Unit by June 30, 2024. The Landlord wanted the Tenant to move out because the personal relationship between the parties had deteriorated. The Tenant did not move out of the Unit by June 30, 2024 and therefore the Tenant remained responsible for \$662.80 in rent for June of 2024, plus applicable internet and electricity costs.
- [16] As a result, \$662.80 of the \$713.50 July 31, 2024 payment covered June of 2024 rental arrears, with the balance being \$50.70.
- [17] On August 2, 2024 the Owner served two *Form 4 (A) Eviction Notices* with an effective date of August 22, 2024 (the "Notices"). The Owner had a valid basis for ending the Primary Agreement with the Landlord as of August 22, 2024 for non-payment of rent.
- [18] The end of the Primary Agreement between the Owner and the Landlord on August 22, 2024 also brought the Sublet Agreement to an end at that time. The Tenant was responsible to the Landlord for pro-rated rent up to August 22, 2024, plus a pro-rated amount of the applicable internet and electricity costs.
- [19] I find that the \$50.70 balance of the July 31, 2024 payment is applied to a portion of August of 2024 rent. As a result, there is no rent to be returned by the Landlord to the Tenant and the Application is denied.
- [20] I note that the Landlord is not seeking a monetary order for payment by the Tenant.

IT IS THEREFORE ORDERED THAT

1. The Application is denied.

DATED at Charlottetown, Prince Edward Island, this 25th day of November, 2024.

(sgd.) Andrew Cudmore

Andrew Cudmore
Residential Tenancy Officer

NOTICE

Right to Appeal

This Order can be appealed to the Island Regulatory and Appeals Commission (the “Commission”) by serving a Notice of Appeal with the Commission and every party to this Order within **20 days of this Order**. If a document is sent electronically after 5:00 p.m., it is considered received the next day that is not a holiday. If a document is sent by mail, it is considered served on the third day after mailing.

Filing with the Court

If no appeal has been made within the noted timelines, this Order can be filed with the Supreme Court of Prince Edward Island and enforced as if it were an order of the Court.